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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1170

RIN 0581-AD12

[Doc. # AMS-DA-10-0089; DA-11-01]

Dairy Product Mandatory Reporting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts changes to Agricultural Marketing Service (AMS) regulations as required by section 273(d) of the Agricultural Marketing Act of 1946 (the Act) as amended by the Mandatory Price Reporting Act of 2010. The amendment to the Act requires the Secretary of Agriculture (Secretary) to establish an electronic reporting system for certain manufacturers of dairy products to report sales information for a mandatory dairy product reporting program. The amendment further states that the Secretary shall publish the information obtained for the preceding week not later than 3:00 p.m. Eastern Time on Wednesday of each week.

DATES: This rule is effective April 1, 2012.

FOR FURTHER INFORMATION CONTACT: For information relevant to this final rule, contact Clifford M. Carman, Assistant to the Deputy Administrator, USDA/AMS/Dairy Programs, Office of the Deputy Administrator, STOP 0225-Room 2968, 1400 Independence Ave, SW, Washington, DC 20250-0225, clifford.carman@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is a statutory requirement pursuant to the Agricultural Marketing Act of 1946 [7 U.S.C. 1621-1627, 1635-1638], as amended November 22, 2000, by Pub. L. 106–532, 114 Stat. 2541; May 13, 2002, by Pub. L. 107–171, 116 Stat. 207; and September 27, 2010, by Pub. L. 111-239, 124 Stat. 2502.

The proposed rule was published in the Federal Register on June 10, 2011 (76 FR 112), with comments to be submitted on or before August 9, 2011. The U.S. Department of Agriculture (USDA) has reviewed and considered all of the comments submitted in a timely manner for this final rule.

Background: The Dairy Product Mandatory Reporting Program, 7 CFR part 1170, was established on August 2, 2007, on an interim final basis (72 FR 36341). A final rule associated with implementation of the program (73 FR 34175) became effective June 22, 2008. The National Agricultural Statistics Service (NASS) has collected information for the program, and the Agricultural Marketing Service (AMS) has provided verification and enforcement functions for the program. NASS has published sales information for cheddar cheese, butter, dry whey, and nonfat dry milk (NFDM) on a weekly basis. NASS began publishing cheddar cheese sales information in 1997 and butter, nonfat dry milk (NFDM), and dry whey sales information in 1998. Information was collected on a voluntary basis before the Dairy Product Mandatory Reporting Program became effective. Any manufacturer that processes and markets less than 1 million pounds of the applicable dairy products per calendar year has been exempt from these reporting requirements.

AMS is responsible for verifying the sales information submitted by reporting entities to NASS. To verify information submitted, AMS visits larger entities that account for 80 percent

of the yearly reported product volume, based on the previous year, of each specified dairy product at least once annually. AMS visits one-half of entities that account for the remaining 20 percent each year, visiting each such entity at least once every other year. During each visit, AMS reviews applicable sales transactions records for at least the 4 most recent weeks. In some cases, AMS may review sales records for up to 2 years. AMS verifies that sales transactions match the information reported to NASS and that there have been no applicable sales transactions that have not been reported to NASS. Noncompliance, appeals, and enforcement procedures are administered by AMS.

The Mandatory Price Reporting Act of 2010 (Pub. L. 111-239, Sept. 27, 2010) amended section 273(d) of the Act (7 USC 1637b) to require that the Secretary establish an electronic reporting system for manufacturers of dairy products to report certain market information for the mandatory dairy product reporting program. The amendment further states that the Secretary shall publish the information obtained under this section for the preceding week not later than 3:00 p.m. Eastern Time on Wednesday of each week. This final rule, in accordance with the Act, includes regulatory changes for implementing these provisions. This rule also transfers applicable data collection responsibilities from NASS to AMS and includes conforming changes.

AMS requested comments on the proposed rule. AMS has reviewed all comments received within the 60-day comment period and has considered these comments in developing this final rule.

Executive Order 12866

This final rule has been determined not to be significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget with respect to this Executive Order.

Executive Order 12988 Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The amendments contained in this final rule are not intended to have a retroactive effect.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this final rule on small entities and has determined that this rule would not have a significant economic impact on a substantial number of small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Small businesses in the dairy product manufacturing¹ industry have been defined by the Small Business Administration (SBA) as those processors employing not more than 500 employees. For purposes of determining a processor's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees. According to U.S. Census Bureau Statistics of U.S. Businesses, there were 1,583 dairy manufacturing establishments in the United States in 2008. Of these businesses, 1,039 establishments had fewer

¹ North American Industry Classification System (NAICS) code 3115

than 500 employees, and 544 establishments had greater than 500 employees (U.S. Census Bureau, 2008 County Business Patterns, <http://www.census.gov/econ/susb/>).

The dairy manufacturing establishments included in U.S. Census Bureau statistics include manufacturers of all types of dairy products. The number of plants that produce butter, cheese, NFDM, and dry whey with the precise specifications included in the mandatory reporting requirements is much lower than this. Furthermore, those manufacturers that process and market less than 1 million pounds of the applicable dairy products annually are exempt from reporting sales data. NASS has conducted an annual validation survey that serves to determine which plants are required to report. In 2011, this survey included 181 plants. The annual cost for plants to complete this survey is estimated at approximately \$9 per plant. AMS will continue to conduct the validation survey annually. For 2011 there were 94 dairy product plants subject to mandatory reporting of sales data. There are 51 reporting entities that report data for one or more plants. (Plant numbers and numbers of reporting entities have been updated from the 2010 numbers that were reported in the proposed rule.) Based upon company profile information available on the Internet, AMS estimates that almost half of the reporting entities are considered small businesses under the criteria established by the SBA.

AMS estimates that the annual cost per plant for reporting sales information for products included in the surveys will be approximately \$586. (The change from \$511 shown in the proposed rule is due to recognition of greater costs associated with plants that must report sales information for both 40-pound blocks and 500-pound barrel cheddar cheese.) The majority of reporting entities have already been submitting data to NASS through a secure web-based application. Less than three plants have been regularly faxing their information, and it is

believed that these plants do have Internet access. Therefore, there would be no significant start-up costs anticipated for the reporting entities as a result of implementing this final rule.

Under the current Dairy Product Mandatory Reporting Program, dairy manufacturers are required to maintain records for verification purposes for a 2-year period. This final rule makes no changes to this requirement. These records are maintained as part of the normal course of business. Thus, there is no additional burden or cost associated with the maintenance of these records. Therefore, in total, this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), reporting and recordkeeping requirements that are utilized to collect the information required by the Act have been reviewed by the Office of Management and Budget (OMB). OMB has assigned a reference number of 0581-0274.

Abstract: The information collection requirements in the request are essential to carry out the intent of the Agricultural Marketing Act of 1946 as amended (the Act).

The Act requires each manufacturer to report to the Secretary information concerning the price, quantity, and moisture content (where applicable) of dairy products sold by the manufacturer. Dairy products reported include cheddar cheese, butter, dry whey, and NFDM. Dairy manufacturers report information for these products if the products meet certain product specifications.

The collection and reporting of sales information, as required by the Act, have been the responsibility of NASS. NASS has collected the information as part of the information

collection package OMB 0535-0020. NASS has allowed manufacturers to submit information through a secure web-based application, by email, or by fax. Manufacturers have been required to submit information to NASS by 12:00 noon on Wednesday on all applicable sales of products during the 7 days ending 12:00 midnight of the previous Saturday, local time of the plant or storage facility where the sales are made. NASS has compiled and aggregated the information reported by the reporting entities and has published the information each Friday morning. When a Federal holiday has fallen on a Tuesday or Wednesday, NASS has contacted manufacturers via e-mail or phone concerning the applicable report deadline.

Manufacturers that process and market less than 1 million pounds of applicable dairy products annually are exempt from reporting requirements. Each year, dairy manufacturers have completed an Annual Validation Worksheet for NASS to determine which dairy manufacturers are exempt and to ascertain if valid information has been supplied.

The Mandatory Price Reporting Act of 2010 amended subsection 273(d), of the Act, requiring the Secretary to establish an electronic reporting system to collect certain information. Using this reporting system, AMS will publish, not later than 3:00 p.m. Eastern Time on Wednesday of each week, a report containing the preceding week's information. The information collection and reporting requirements have been the responsibility of NASS. Under this final rule, AMS will assume this responsibility. NASS will no longer collect price, quantity, or moisture content (where applicable) information for cheddar cheese, butter, NFDM, or dry whey, and NASS will no longer collect the associated annual validation information. The forms associated with this data collection will be removed from NASS collection package, OMB 0535-0020, and will be replaced by forms in AMS collection package, OMB 0581-0274.

Every effort has been made to minimize any unnecessary recordkeeping costs or requirements. The electronic submission forms will require the minimum information necessary to carry out the requirements of the program effectively, and their use is necessary to fulfill the intent of the Act. It is expected that no outside technical expertise will be needed. The forms are simple, easy to understand, and place as small a burden as possible on respondents.

To assist the industry in achieving compliance, educational and outreach sessions will be held prior to implementation. AMS will assist reporting entities in understanding requirements for submitting data through electronic means. In addition, AMS will beta test the electronic-submission technology before implementation, and all entities required to report will be encouraged to participate in the beta-testing program. Any feedback received during this outreach and testing period will be used to correct technical problems.

Collecting the information will coincide with normal industry business practices. The timing and frequency of collecting information are intended to meet the needs of the program while minimizing the amount of work necessary to submit the required reports. The information to be collected by AMS is almost identical to the information that has been collected by NASS. While NASS has required either the total sales dollars or the dollars per pound in addition to the total pounds of products sold to be reported, AMS will require both the total sales dollars and the dollars per pound to be reported along with the total pounds of products sold in order to provide an additional validation check. NASS has permitted manufacturers to submit information through a secure web-based application, by email, or by fax. This final rule, however, requires manufacturers to submit information only by electronic means specified by AMS. AMS has specified that each manufacturer submit the information using a secure Internet connection that

includes a user name and password. The requirement that reporting entities submit information electronically is in accordance with the Act.

The frequency of data collection will not change. Reporting entities have been required to report information to NASS on a weekly basis by 12:00 noon local time on Wednesday. This final rule requires reporting entities to report information to AMS on a weekly basis by 12:00 noon, local time of the reporting entities, on Tuesday. This change is necessary to allow AMS personnel time to review and compile data and to publish the information by 3:00 p.m. Eastern Time on Wednesday as required by the Act. If a Federal holiday falls on Monday through Wednesday of a particular week, the due date for report submission may be adjusted. Prior to the beginning of each calendar year, AMS shall inform reporting entities of the times and dates that reports are due.

The first date reporting entities shall provide information to AMS will be Tuesday, April 3, 2012, of sales data for the week ending Saturday, March 31, 2012. The first publication by AMS will be on Wednesday, April 4, 2012, by 3:00 pm Eastern Time. The last publication by NASS will be on March 30, 2012, of sales data through the week ending March 24, 2012.

Information collection requirements included in this final rule are listed below. There have been minor changes to the number of respondents compared to the proposed rule due to updated information and the separation of cheddar cheese surveys into two types: blocks and barrels.

(1) Dairy Products Sales, Cheddar Cheese, 40-pound blocks.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per week for each report submitted.

Respondents: Cheddar cheese manufacturers of 40-pound blocks. Each reporting entity may report for a single cheddar cheese plant or it may report for more than one cheddar cheese plant, depending upon how the business is structured.

Estimated Number of Respondents: 18.

Estimated Total Annual Burden on Respondents: 312 hours.

(2) Dairy Products Sales, Cheddar Cheese, 500-pound barrels.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per week for each report submitted.

Respondents: Cheddar cheese manufacturers of 500-pound barrels. Each reporting entity may report for a single cheddar cheese plant or it may report for more than one cheddar cheese plant, depending upon how the business is structured.

Estimated Number of Respondents: 14.

Estimated Total Annual Burden on Respondents: 243 hours.

(3) Dairy Products Sales, Butter.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per week for each report submitted.

Respondents: Butter manufacturers. Each reporting entity may report for a single butter plant or it may report for more than one butter plant, depending upon how the business is structured.

Estimated Number of Respondents: 19.

Estimated Total Annual Burden on Respondents: 329 hours.

(4) Dairy Products Sales, Nonfat Dry Milk.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per week for each report submitted.

Respondents: NFDM manufacturers. Each reporting entity may report for a single NFDM plant or it may report for more than one NFDM plant, depending upon how the business is structured.

Estimated Number of Respondents: 28.

Estimated Total Annual Burden on Respondents: 485 hours.

(5) Dairy Products Sales, Dry Whey.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per week for each report submitted.

Respondents: Dry whey manufacturers. Each reporting entity may report for a single dry whey plant or it may report for more than one dry whey plant, depending upon how the business is structured.

Estimated Number of Respondents: 20.

Estimated Total Annual Burden on Respondents: 347 hours.

(6) Annual Validation Survey.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per year for each report submitted.

Respondents: Dairy manufacturers. Each reporting entity may report for a single plant or it may report for more than one plant, depending upon how the business is structured.

Estimated Number of Respondents: 181.

Estimated Total Annual Burden on Respondents: 60 hours.

(7) Survey Follow-Up, Verification.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes for each contact from AMS.

Respondents: Dairy manufacturers. Each reporting entity may report for a single plant or it may report for more than one plant, depending upon how the business is structured.

Estimated Number of Respondents: 7 per week.

Estimated Total Annual Burden on Respondents: 30 hours.

Copies of this information collection and related instructions can be obtained without charge from Clifford M. Carman, Assistant to the Deputy Administrator, Dairy Programs, AMS, USDA, clifford.carman@ams.usda.gov, phone: (202) 690-2998.

Except as otherwise directed by the Secretary of Agriculture or the U.S. Attorney General for enforcement purposes, no officer, employee, or agent of the United States shall provide the public any information, statistics, or documents obtained from or submitted by any person under the Act that does not ensure preservation of confidentiality regarding the identity of persons, including parties to contracts and proprietary business information. All report forms include a statement that individual reports are kept confidential.

With respect to the application of the Privacy Act of 1974 (5 U.S.C. 552a) to the maintenance of records required by the Act, the Dairy Products Sales survey population consists of dairy product manufacturers. Data collected by this survey relates to manufacturers' operations and transactions and not to those of individuals. Records maintained at business sites for verification of information that would be reported to AMS include contracts, agreements, receipts, and other materials related to sales of specific dairy products. No records about individuals would be maintained by AMS for this survey, and AMS believes that none would be part of these maintained business papers.

Discussion of Comments

The proposed rule solicited comments to be submitted to USDA on or before August 9, 2011. During this 60-day comment period, seven comment submissions were received: three from dairy cooperative associations, two from cooperative federations, one from a dairy producer association, and one from a dairy manufacturer/processor trade association. Six of the commenters expressed overall support for the mandatory electronic reporting system and one commenter specifically expressed support for AMS to beta test the electronic submission technology.

Two commenters asked that AMS initiate a second rule and comment period so that the industry can address issues on product specifications, data collection, and publication. AMS will consider soliciting public comments through the Federal Register on related issues for mandatory reporting, such as product specifications.

One commenter stated that, although the Mandatory Price Reporting Act of 2010 sets timing for mandatory electronic reporting, they believe congressional authority exists for daily reporting, citing that the 2008 Farm Bill authorizes “more frequent reporting.” AMS considered this comment, however, the Act does not permit a requirement for reporting entities to report at any frequency other than weekly. Paragraph (b)(2)(C) of section 273 of the Act provides a condition that “the frequency of the required reporting...does not exceed the frequency used to establish minimum prices for Class III or Class IV milk under a Federal milk marketing order.” The Federal milk marketing orders establish minimum prices for Class III and Class IV milk based upon weekly dairy products prices reported (7 CFR 1000.50). Although the 2008 Farm Bill amended subsection (d) of section 273 of the Act to require more frequent reporting, subject to the availability of funds, the Mandatory Price Reporting Act of 2010 further amended the Act, deleting the requirement for more frequent reporting. One reporting entity specifically opposed

any reporting period that is more frequent than weekly, citing time needed to receive warehouse bills of lading and preparation time for reporting information.

Three commenters expressed concern about the proposed change to move the weekly manufacturers' submission of reports from Wednesday 12:00 noon local time to Tuesday 12:00 noon local time, stating that this change would result in increased regulatory costs and increased revisions. AMS acknowledges that the change in reporting date by one day may cause manufacturers to change their methods of data collection and reporting, adding some additional reporting burden. However, AMS must publish sales reports by 3:00 pm Eastern Time on Wednesday whereas NASS has published sales reports on Friday morning. USDA, therefore, must change the weekly reporting day in order to complete validation checks and data analysis before weekly publication.

Three commenters had concerns about increased burdens and revisions for weeks that include an intervening holiday. AMS plans to allow reporting later in the week than Tuesday at noon when holidays intervene with reporting dates. USDA will provide the public an annual reporting schedule prior to the beginning of each calendar year.

One commenter requested that reporting flexibility be extended to accommodate situations that arise outside the control of the reporting facility. Barring any unforeseen circumstances which would make timely reporting impossible (such as an extreme natural disaster), AMS plans to hold the Tuesday noon submission deadline steadfast each week (other than a week with an intervening holiday). This will facilitate AMS in fulfilling its obligation to report by Wednesday at 3:00 pm Eastern Time each week (other than a week with an intervening holiday).

One commenter asked for guidance on how revisions would be submitted with the new electronic reporting system. Although revision procedures are not specifically spelled out in this rule, AMS will provide instructions for reporting requirements, including reporting of revisions, to all parties that must report. These instructions will be available to respondents during the reporting process. In addition, the procedures will be covered in educational and outreach sessions that will be provided to respondents prior to implementation of the amendments.

One commenter encouraged AMS to provide weekly notices to dairy manufacturers reminding them of the reporting deadlines for the following week. AMS does not plan to send weekly reminders concerning the due dates of reports. This final rule states that a schedule shall be provided to reporting entities prior to the beginning of each calendar year; AMS plans to post the scheduled reporting due dates on the Internet. This does not preclude AMS from providing other reminders to reporting entities throughout the year, such as for weeks with upcoming holidays.

Two commenters requested that reporting requirements be expanded beyond the current four commodities: cheddar cheese, butter, nonfat dry milk, and dry whey. One commenter asked for reporting requirements to include yogurt, sour cream, cottage cheese, and other types of cheeses with a large sales volume. Another commenter asked that other products be added to the reporting list, including mozzarella (low or high moisture), Monterey Jack, Grade A Swiss, skim milk powder, buttermilk powder, whole milk powder, whey protein concentrate, and soft products or spot cream. The Act does not permit expanding the list of mandatory reported commodities beyond the four products historically reported. Paragraph (b)(2) of section 273 of the Act provides a condition that “the information...is required only to the extent that the information is actually used to establish minimum prices for Class III or Class IV milk under a

Federal milk marketing order.” The Federal milk marketing orders establish minimum prices for Class III and Class IV milk based upon prices reported for butter, cheddar cheese, nonfat dry milk, and dry whey (7 CFR 1000.50).

One of the commenters requested that AMS expand the required reporting plants by reducing the 1 million pounds per year threshold to 500,000 pounds per year production or sales. Paragraph (b)(2)(D) of section 273 of the Act states, “the Secretary may exempt from all reporting requirements any manufacturer that processes and markets less than 1,000,000 pounds of dairy products per year.” The Act does not permit AMS to establish a reporting exemption threshold for manufacturers at any level other than 1 million pounds of dairy products processed and marketed per year.

One commenter asked that cheese committed for sale, but not yet sold (delivered), be designated as such for mandatory storage reporting. Mandatory dairy product storage reporting is the responsibility of NASS, and this final rule makes no changes with respect to mandatory storage reporting.

AMS has made one change in this final rule from the proposed rule. The reporting requirements in § 1170.7 (a) have been modified to indicate that reporting entities must report both the total sales dollars and dollars per pound for the applicable products. NASS has required either the total sales dollars or dollars per pound for the applicable products to be reported, and the proposed rule would have continued this requirement without change. However, the requirement to report both the total sales dollars and dollars per pound will provide AMS with a validation check to insure that, in each instance, the total sales dollars reported equals the dollars per pound times the reported quantity. Since this is a de minimus change in reporting burden, it has no effect on the estimated reporting burden for each survey.

List of Subjects in 7 CFR Part 1170

Dairy products, reporting and recordkeeping requirements, Cheese, Butter, Dry Whey, Nonfat Dry Milk.

Accordingly, 7 CFR part 1170 is amended as follows:

PART 1170 -- DAIRY PRODUCT MANDATORY REPORTING

1. The authority citation for part 1170 is revised to read as follows:

Authority: 7 U.S.C. 1637 - 1637b, as amended by Pub. L. 106-532, 114 Stat. 2541; Pub. L. 107-171, 116 Stat. 207; and Pub. L. 111-239, 124 Stat. 2501.

2. Revise § 1170.2 to read as follows:

§ 1170.2 Act.

Act means the Agricultural Marketing Act of 1946, 7 U.S.C. 1621 et seq., as amended by the Dairy Market Enhancement Act of 2000, Pub. L. 106-532, 114 Stat. 2541; the Farm Security and Rural Investment Act of 2002, Pub. L. 107-171, 116 Stat. 207; and the Mandatory Price Reporting Act of 2010, Pub. L. 111-239, 124 Stat. 2501.

3. Revise § 1170.7 to read as follows:

§ 1170.7 Reporting requirements.

(a) All dairy product manufacturers, with the exception of those who are exempt as described in § 1170.9, shall submit a report weekly to the Agricultural Marketing Service (AMS) by Tuesday, 12:00 noon local time of reporting entities, on all products sold as specified in § 1170.8 during the 7 days ending 12:00 midnight of the previous Saturday, local time of the plant

or storage facility where the sales are made. If a Federal holiday falls on Monday through Wednesday of a particular week, the due date for report submission may be adjusted. Prior to the beginning of each calendar year, AMS shall release, to manufacturers that are required to report, the times and dates that reports are due. For the applicable products, the report shall be submitted by electronic means specified by AMS and shall indicate the name, address, plant location(s), quantities sold, total sales dollars, dollars per pound, and the moisture content where applicable. Each sale shall be reported for the time period when the transaction is completed, i.e. the product is “shipped out” and title transfer occurs. Each sale shall be reported either f.o.b. plant if the product is “shipped out” from the plant or f.o.b. storage facility location if the product is “shipped out” from a storage facility. In calculating the total dollars received and dollars per pound, the reporting entity shall neither add transportation charges incurred at the time the product is “shipped out” or after the product is “shipped out” nor deduct transportation charges incurred before the product is “shipped out.” In calculating the total dollars received and dollars per pound, the reporting entity shall not deduct brokerage fees or clearing charges paid by the manufacturer.

(b) Manufacturers or other persons storing dairy products are required to report, on a monthly basis, stocks of dairy products (as defined in § 1170.4) on hand, on the appropriate forms supplied by the National Agricultural Statistic Service. The report shall indicate the name, address, and stocks on hand at the end of the month for each storage location.

4. Revise § 1170.8 (a)(3)(ii) to read as follows:

§ 1170.8 Price reporting specifications.

* * * * *

(a) * * *

(3) * * *

(ii) 500-pound barrels: Report weighted average moisture content of cheese sold. AMS will adjust price to a benchmark of 38.0 percent based on standard moisture adjustment formulas. Exclude cheese with moisture content exceeding 37.7 percent.

* * * * *

5. Add § 1170.17 to read as follows:

§ 1170.17 Publication of statistical information.

Not later than 3:00 p.m. Eastern Time on the Wednesday of each week, AMS shall publish aggregated information obtained from manufacturers or other persons of all products sold as specified in § 1170.8. If a Federal holiday falls on Monday through Wednesday of a particular week, the due date for report publication may be adjusted. The public shall be notified of report times prior to the beginning of the calendar year.

Dated: February 9, 2012

Robert C. Keeney,
Acting Administrator
Agricultural Marketing Service

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